

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9732 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BHIKUBHAI MANIBHAI PATEL

Versus

DY SECRETARY

Appearance:

MR MI HAVA for Petitioner

MR TH SOMPURA, AGP, for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 14/02/97

ORAL JUDGEMENT

The present petition before me poses the question regarding the validity and the legality of the orders passed by the State while exercising the powers under Section 34 of the Urban Land (Ceiling and Regulation) Act, 1976.

Some broad facts leading to the filing of the present petition can be noticed thus: The Competent Authority, Surat was required to decide the question in respect of the land holder Shri Bhikubhai Manibhai Patel. In the requisite form under Section 6(1) of the ULC Act, 1976, he had shown five parcels of land, situated at village Pandesara under the Surat District. In the present petition, I am concerned with the rest of the parcels of land excepting the parcels shown at Sr.Nos. 3 and 5. The parcel of land at Sr.No. 3 bears Survey No.111/1 admeasuring 21145 sq.mtrs. The parcel shown at Sr.No. 5 happens to be a constructed property under the house No.304. The Competent Authority under the orders dated January 8, 1987, had come to the conclusion that the constructed property was not required to be taken into consideration. So far as the land bearing Survey No.111/1 is concerned, the Competent Authority had accepted the case of the petitioner that, the SUDA road passes through the land in question and, therefore, the above said area occupied by the road was required to be taken out for the purposes of the ULC Act, 1976. The Competent Authority was also of the opinion that, in the same way, certain other portions of the land which were required to be kept open by the land holder because of the passing of the road, were also required to be deducted. This exercise was done by the Competent Authority. According to the Competent Authority, the land holders were required to be given seven units; 6 for the daughters and one for the father. Therefore, according to the Competent Authority, the land holders were entitled to the land admeasuring 10,500 sq.mtrs. but the total holding was not extending to the said area and, therefore, the form presented by the land holders was ordered to be filed. These orders passed by the Competent Authority came to be taken in suo-motu revision under Section 34 of the ULC Act, 1976. The Joint Secretary to the Government in Revenue Department who had given the necessary show cause notice had come to the conclusion that the constructed area could not have been deducted and in the same way, the case of the land holders regarding the land being utilised for the purpose of SUDA road and other allied purposes also could not have been recognised. This finding of the Joint Secretary has resulted in the orders dated July 9, 1994 under which a view has been taken that, an area of 11,142 sq.mtrs. should be the excess vacant land. This has been ordered after setting aside the orders passed by the Competent Authority on January 28, 1987. The above said orders are in challenge in the present petition.

The orders passed by the Joint Secretary to the

Government in the Revenue Department, would go to show that the show cause notice was served upon the land holder on September 5, 1995. There was a debate on the question of the actual service because of the contentions being raised by learned Counsel Mr. Hava for the petitioners. Ultimately, the record has shown that, such a show cause notice could be issued to the wife of the land holder, who had presented the requisite form under Section 6(1) of the ULC Act, 1976.

After having done this exercise, the next question which had arisen for the consideration was, as to whether when the land holders had not appeared before the Government in response to the show cause notice, would it be open for the petitioners to urge before me that the orders passed by the Joint Secretary suffers from apparent vices of not taking into consideration the material which was already presented before the Competent Authority.

At one point of time, before me also, there was a debate regarding the scope of the Government exercising the revisional powers under Section 34 of the Act of 1976. Ultimately, it was found appropriate to decide the present petition on its own merits.

The Joint Secretary to the Government, Revenue Department has come to the conclusion that, there was no evidence regarding the SUDA road and the TP road and that, in the same way, there was no material showing out the margin land etc. Saying so, the Joint Secretary has said that the deductions could not have been allowed.

It is true that, despite the service of notice to the wife of the land holder, none of the petitioners had gone before the Government with a view to present their case against the show cause notice. Nonetheless, there was some material which was already produced before the Competent Authority. If, in my view, the Joint Secretary was of the opinion that the material which was already on record was not sufficient or complete enough to justify the view taken by the Competent Authority, then the proper course would have been to remand the matter to the Competent Authority so that the exact position could be demonstrated before the Competent Authority. Learned Counsel Mr. Hava for the petitioner draws my attention to an unreported decision of this Court in SPECIAL CIVIL APPLICATION NO. 2916 OF 1993 decided on September 26, 1996. The above said was a petition directed against the orders passed by the Government in revision under Section 34 of the ULC Act, 1976. A view has been taken in this

decision that, if the Government were of the opinion that there was not enough material to warrant a conclusion which have been accepted by the Competent Authority, then the matter could have been remanded to the Competent Authority so that the material could have been examined.

While indicating the broad facts which have led to the filing of the present petition, I have said that the case of the land holder regarding the constructed property and the area being occupied by the SUDA road and the allied purposes has been accepted by the Competent Authority, but that the same has not been recognised by the Government, while exercising the powers under Section 34 of the ULC Act, 1976. The orders as indicated by me hereinabove would also go to suggest that enough material was not there. If that were to be the case, the Government, in the exercise of powers under Section 34 of the ULC Act, 1976, could have ordered the remand of the matter to the Competent Authority so that a further investigation into the matter could have been possible and permissible. Any how, the Government has not done this. Therefore, in my view, the petition requires a partial recognition and after setting aside the orders passed by the Joint Secretary to the Government in Revenue Department, the matter requires to be remanded to the very same authority so that all the questions could be examined after affording a reasonable opportunity of being heard to the petitioner. I order accordingly.

In the result, therefore, the impugned orders of the Joint Secretary dated July 9, 1993, available at Annexure.A to the petition stand quashed and set aside and the matter stands remanded to the very same authority for taking a fresh decision according to law on merits after affording a reasonable opportunity of being heard to the petitioner. It is understood, as is made clear by the learned Counsel for the petitioner that the petitioner shall co-operate with the expeditious disposal of the revisional proceedings without asking for unreasonable time.

The petition succeeds to the above said extent. Rule is made absolute to the said extent only with no order as to costs. The xerox copy of the orders passed by the Competent Authority being presented by the learned Counsel for the petitioner be kept on record.
